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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
1998 Biennial Regulatory Review – Review of	)	
the Commission's Broadcast Ownership Rules	)	MM Docket No. 98-35
and Other Rules Adopted Pursuant to Section	)	
202 of the Telecommunications Act of 1996	)	

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COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

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July 21, 1998

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EXECUTIVE SUMMARY

In response to the Commission's *Notice of Inquiry,* the National Association of Broadcasters submits its views on various FCC broadcast ownership-related rules that are now being reassessed as part of the first Commission biennial review mandated by the Congress. NAB's comments are supported by several studies recently conducted by or on behalf of NAB.

NAB's *Media Outlets by Market -- An Update* study shows a wealth and growing number of media outlets available to the entire population. The competition and media choices presented by this vast array of outlets suggests that the foundation for many of these ownership rules no longer exists.

For one, NAB strongly supports complete rescission of the rule barring local crossownership of broadcast stations and daily newspapers. Another study commissioned by NAB goes on to point out the efficiencies and possible *increases* in diversity that would occur were this newspaper/broadcast rule to be abandoned.

NAB believes the Commission should not propose changes to the television national ownership rule due to, among other things, the ongoing DTV transition and the pending proceeding addressing cable "must carry" rules for the digital age. Also, and based on two other NAB studies showing the ratings and financial dimensions of the "UHF penalty," we similarly oppose any changes to the "UHF discount" applicable to compliance with the television national ownership rule.

Although there now are far more media outlets available to the consumer than when the cable/broadcast local crossownership restriction was adopted in 1970, NAB strongly opposes any alteration of the rule. Until digital must carry rights are ensured for digital broadcasting, cable television still would have the *potential* to eliminate or hamper the public's ability to access other media competitors -- local broadcasters not owned by the cable system. Thus, no reassessment of the cable/broadcast local crossownership rule should be entertained until a digital must carry regime has been firmly established.

NAB does, however, recommend that the FCC rescind the rule that currently restricts the number of "experimental" broadcast stations that may be operated by a single entity. But, NAB urges the Commission to ensure that the operation of such experimental stations not cause interference to other licensed broadcast facilities.

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I. INTRODUCTION AND SUMMARY

A. Scope of This Proceeding and its Relation to Other Proceedings

Section 202 (h) of the Telecommunications Act of 1996[1] requires the FCC to review its broadcast ownership rules every two years. On March 12, 1998, the Commission began the first of these reviews with the adoption of the *Notice of Inquiry* in the above-captioned proceeding.[2] Here the National Association of Broadcasters ("NAB")[3] files comments addressing the issues for which the Commission has solicited public response.

In the *Notice* the Commission has asked for comment on a range of existing ownership rules. Among the rules for which the FCC seeks *new* comment include: the broadcast/daily newspaper local cross-ownership prohibition; the national television ownership limitations; the "UHF discount" for national television ownership rule compliance; the television/cable cross-

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[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[2] *Notice of Inquiry* MM Docket No. 98-35 ("*Notice*"), ___ FCC Rcd ___ (1998).

[3]NAB is a nonprofit, incorporated association of television and radio stations and broadcast networks which serves and represents the American broadcast industry.

ownership restriction; and the ownership restrictions applying to "experimental" broadcast stations. Because this proceeding only is an inquiry, it cannot result directly in rule changes. Further rulemaking proceedings would be required. However, the record to be established in this proceeding may indeed lead to subsequent FCC rulemaking proposals -- where rule changes may be effected.

Also, the comments that will be submitted into the instant biennial ownership review record may well have an impact on other, related rule changes -- including those that are the subject of ongoing proceedings for which the Commission has *not* solicited further comment. Already being addressed in pending proceedings are FCC-proposed changes to the local television duopoly and one-to-a-market rules,[4] the ownership "attribution" rules[5] and the "waiver" policy applying to the daily newspaper/*radio* cross-ownership rule.[6] The Commission says that these ongoing proceedings constitute a reassessment that satisfies the "biennial review" provision of the Act, vis-à-vis those particular rules and that it does not seek any further comment on these pending proceedings. The outcome of these proceedings, obviously will not be determined in a vacuum. That is, the data, studies, reports and arguments submitted in the instant "biennial review" inquiry are in many respects germane to the issues that are being addressed in these separate, ownership-related rule makings. In this regard, NAB specifically

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[4] *See Second Further Notice of Proposed Rule Making* in MM Docket Nos. 91-221 and 87-8, 11 FCC Rcd 21655 (1996).

[5] *See Notice of Proposed Rule Making* in MM Docket Nos. 94-150, 92-51 and 87-154, 10 FCC Rcd 3606 (1995).

[6] *See Notice of Inquiry* in MM Docket No. 96-187, 11 FCC Rcd 13003 (1996).

urges the Commission to associate the "media outlets"[7] study being submitted today with the record in these other, pending FCC rule makings.

Although the Commission says it wishes to focus upon only a limited number of ownership rules, the agency does acknowledge how the instant inquiry is being affected by past and proposed regulatory change. For example, the FCC, in 1996, amended some other ownership rules as mandated by the Telecommunications Act -- specifically the national and local radio ownership rules and the television national limits.[8] This current FCC *Inquiry* seeks comment on the effects of the Telecommunications Act-dictated rule changes on "competition" and "diversity." NAB will address these matters as well.

B. NAB Studies that are Relevant to the Matters Presented.

At the time the FCC issued its *Notice*, NAB already had a position on many of the rules for which the Commission sought comment. However, there were some rules advanced for comment in the *Notice* to which the NAB Board of Directors had not directed its attention. To provide the NAB Board with the opportunity to review these issues and provide direction for the formation of NAB's comments in this proceeding, and also to facilitate NAB's and others' completion and analysis of several studies germane to these proposed rule changes, NAB sought and obtained a two-month extension in the comment and reply comment deadlines.[9] These deadlines are now July 21, 1998, and August 21, 1998.

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[7] *Media Outlets by Market – Update*, Mark R. Fratrik, Ph.D., National Association of Broadcasters, June 1998, provided as "Appendix A."

[8] *See Order*, 11 FCC Rcd 12368 (1996) (local duopoly rule revision); *see also Order*, 11 FCC Rcd 12374 (1996) (national television ownership cap revision).

[9] *Order* in MM Docket No. 98-35 (DA98-854), adopted May 7, 1998.

NAB conducted and commissioned several studies -- both through in-house research and outside contractors. The results of these studies are included in our comments today. These reports are:

- An update on the availability of media outlets, analyzed on a DMA basis.[10] These outlets include television stations, radio stations, cable channels, newspapers and magazines, direct broadcast satellites and those accessed via the Internet.
- An examination of potential efficiencies of local radio and/or television combinations with local newspapers.[11]
- An examination of the relative ratings and financial conditions of UHF network-affiliated stations, as compared to VHF network affiliates. This examination was conducted through two studies – one focussing on ratings information[12] and the other based on financial information.[13]

II. CHANGES IN THE MEDIA MARKETPLACE

When evaluating the various ownership regulations and whether they should be retained or discarded, it is important to recognize the different environment in which television and radio stations find themselves today. Not only are there more terrestrial television and radio stations competing against one another, there is still the locally-dominating (in terms of advertising revenues) local newspaper industry; there is a stronger cable industry; there is a new and fast growing DBS industry; and finally, there is an Internet service growing dramatically and opening up an infinite number of outlets for entertainment and information. Competition for the eyes and

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[10] *Media Outlets by Market – Update, supra note* 7.

[11] *A Study to Determine Certain Economic Implications of Broadcasting/Newspaper Cross-Ownership,* June 1998, provided as "Appendix B."

[12] *The "UHF Penalty" Demonstrated,* Stephen E. Everett, Ph.D., National Association of Broadcasters, June 1998, provided at "Appendix C."

[13] *A Financial Analysis of the UHF Handicap,* Mark R. Fratrik, Ph.D., National Association of Broadcasters, June 1998, provided at "Appendix D."

ears of the American public has never been greater and the prospects for further competition have never been more promising.

Appendix A of this filing, *Media Outlets by Market – Update*, documents this cavalcade of media outlets available to all markets. This paper highlights that people in all market sizes have available to them a wealth of media outlets. Some of the highlights of that study show:

- The average market has 12.4 television stations and the total number of stations increased 19.7% since 1987.

- The average market has 84.1 commercial radio stations and the total number of commercial stations increased 16.7%.

- Nationwide cable penetration increased from 50.5% in May 1987 to 66.1 presently, with cable passing 96.7 of all TV homes. The average market has 65.8 cable channels in use. Some of the largest percentage increases in cable channels in use occurred in the smallest markets.

- The average market has 18.3 newspapers that reach 1,000 or more in circulation, 13.6 of which were published within the market, and 2.9 of which reach a minimum of 5% penetration.

- The average market has a 23.6% penetration of weekly newspapers.

- The average market has 10.2 national magazines that reach a 5% penetration in readership.

- VCR penetration grew from 48.7% in 1987 to 84.2% presently.

- DBS subscribers now total more than nine million, with more than two million signing on in the last year.

- From 4.9 million households on line in 1994, nearly five times that number, 23.4 million, are presently on line reaching millions of sites, with that number expected to grow to 35.2 million by the year 2000.

Americans now have an incredibly long parade of choices for information and entertainment and this national parade goes through each and every Main Street in the country.

III. NAB'S POSITION ON THE OWNERSHIP ISSUES RAISED IN THE NOTICE

A. Radio Ownership Rules Adopted in 1996

In the *Notice*, the Commission asks for comment on the effects of the changes in the local duopoly limits, as mandated by the Telecommunications Act. The agency asks that commenters address the effects on competition and diversity.

On the subject of diversity, the Commission should first direct its attention to the Mass Media Bureau's *Review of the Radio Industry, 1997*.[14] In terms of diversity of format, the FCC report demonstrates no trends toward changes in the levels of program format diversity.[15]

Also documenting the diversity of mass media outlets – of which radio is only one of myriad choices for the consumer – is NAB's updated *Media Outlets by Market – Update* study, presented as Appendix A to these comments. This study demonstrates the wealth of diverse media alternatives available to each and every American. Indeed, the recent growth of mass media outlets is unprecedented. Never before in the history of our country have there been so many choices presented to our citizenry for news, other information and entertainment.

Both the FCC *Mass Media Bureau Report* and NAB's *Media Outlets by Market – Update* study show robust competition among media, with radio now experiencing significant financial growth. As such, it appears that the Congressionally-mandated changes in the radio duopoly rules have had positive effects. Coupled with the growth in virtually all electronic mass media, the consumers now has a wealth of diverse choices – with radio now being a stronger and more healthy choice than ever before. Thus, the Commission should not take any action to change the radio ownership rules.

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[14] Policy and Rules Division, FCC Mass Media Bureau, March 13, 1997 (*"Mass Media Bureau Report"*). This report was submitted into the record of the instant inquiry proceeding.

[15] *Id.* at 8.

B. Daily Newspaper/Broadcast Crossownership Rule

1. There No Longer Is a Rational or Factual Foundation for the Prohibition

In 1975 the Commission adopted a rule prohibiting the cross-ownership of a newspaper and a broadcast station in the same market.[16] NAB opposed the regulation at the time and reasserts today that the ban should be lifted. Deregulation of broadcasting should continue with newspaper/broadcast cross-ownership. A monopoly of the media outlets in a single market is no longer a concern, as it was in 1975, in today's technologically-advanced world.

As NAB argued in *National Citizens Committee for Broadcasting*,[17]newspapers should not be singled out by the Commission as one of the few groups prohibited from owning broadcast stations. Restrictions on cross-ownership against other media was the Court's rationale for rejecting NAB's argument in *NCCB*. Since the Telecommunications Act of 1996, that is obviously no longer the case. Television, radio, cable and telephone companies have all found themselves the beneficiaries of deregulation; there is no rational basis to stop deregulation there.

The Commission, in establishing the newspaper/broadcast local ownership prohibition, reasoned that the diversity of ownership was needed to create a diversity of viewpoints. The Commission argued that with a limited number of broadcast stations operating in each market, the number of owners of these media outlets needed to be maximized. Television broadcasting had only three networks; the vast majority of local television stations were network affiliates.

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[16] *See* Multiple Ownership of Standard, FM and Television Broadcast Stations, *Second Report and Order*, 50 FCC 2d 1046, 32 Rad. Regulation. 2d (P & F) 954 ("*Second Report and Order*"), recon., 53 FCC 2d 589, 33 Rad. Regulation. 2d (P & F) 1603 (1975), *aff'd sub nom. FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978)

[17] 436 U.S. 775 (1978) ("*NCCB*").

There were few independent stations, if any, in individual markets. On the radio side, AM broadcasting still dominated and the FM band had not yet gained wide acceptance. Today, due to technological advances and the introduction of more broadcast and non-broadcast voices, there are far more outlets expressing opinions today than there have ever been before.[18]

Even at the time the ban was adopted, there was no affirmative evidence that cross-ownership limited the diversity of opinion. "In the Commission's view, the conflicting studies submitted... were inconclusive, and no pattern of specific abuses by existing cross-owners was demonstrated."[19] Looking today at those grandfathered newspaper/broadcast cross-ownership shows that, almost invariably, the two operations have been kept separate.[20] This is mostly due to the fact that the two businesses are so different, it is not efficient to combine some departments.[21]

Moreover, in the time that has elapsed from the adoption of the local newspaper/broadcast ownership prohibition, communications policy has evolved to the point where this rule stands as an inconsistent oddity, as compared to the rules governing co-ownership of other competing media.

In 1989, as the Commission established a waiver policy for the application of the "one to-a-market" rule in larger markets, the FCC noted that it "... continue[s] to recognize that economic competition and diversity of programming and viewpoints are not the only goals, and diversity of ownership is not the only consideration, in the licensing of broadcast stations in the

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[18] *See* Appendix A.

[19] *NCCB*, 436 U.S. at 786.

[20] *See* Appendix B at 5.

[21] Appendix B at 6 and 20-21.

public interest."[22] The Telecommunications Act of 1996, in requiring changes to the local radio duopoly rules and enacting other provisions contemplating economies of scale, indicates that the Congress has reached the same conclusion. Maximizing ownership diversity no longer can be considered as necessarily advancing the public interest. That consideration must govern the FCC's reassessment of the daily newspaper/broadcast local crossownership prohibition.

2. Financial Benefits and Increases in Diversity with Joint Broadcaster/Newspaper Combinations

While local newspapers dominate many local advertising markets, there is no denying the fact that the number of newspapers has declined in recent years. This is evident from Appendix A, which shows that in five of the nine market groupings the average number of daily newspapers reaching a 5% penetration within its market decreased.[23] There are several other daily newspapers in each market and in many markets the penetration rate of weekly newspapers is very high.

Nevertheless, some daily newspapers are being challenged financially. This is partially due to the huge operational costs of newspaper printing and distribution and the increase in competition from other media outlets for advertising revenue. Newspaper advertising has become creative in order to meet these costs, offering clients flyers and special pullout sections, for example. What might bolster newspapers' financial condition is being affiliated with a local broadcast operation. Appendix B, the Bond & Pecaro study on potential efficiencies associated with such joint operations, provides evidence that such operations can add a considerable amount to the bottom line. In fact, the most noticeable effects occur in the smaller markets where not

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[22] *Report and Order,* 4 FCC Rcd 1741, 1742 (1989).

[23] Appendix A at 10 and Appendix A, Figure 6, at 12.

surprisingly there are the fewest number of daily newspapers overall and those that reach the 5% penetration threshold.[24]

Economic efficiency could exist in the combination of some departments of the two businesses with relaxation of this rule. According to the best estimates, efficiency gains would result in increased operating cash flow ranging from 8.6% to 22%.[25] The efficiencies cross-ownership could provide would likely bolster newspapers' financial condition. As a result, more newspapers that may otherwise fail are more likely to survive the climate of increased competition. Again, this is particularly true in smaller markets where the economic efficiencies have a greater positive effect[26] and where there are fewer newspapers.[27]

What we are suggesting is that diversity could actually *increase* as a result of relaxing the local broadcast newspaper ownership regulations. Marginal or failing newspapers could be maintained or even strengthened by being associated with a local broadcast operation.

Some may argue that common ownership of newspapers and broadcast stations, while making the newspaper and broadcast operation more financially sound, does not increase a diversity of voices. What is overlooked in that conclusion, however, is that "newspaper publishing and broadcasting are distinctly different businesses."[28] In the analysis of the potential efficiencies, only "moderate savings were foreseen in the consolidation of news operations. A

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[24] Appendix B at 6 and Appendix A, Figure 5, at 11.

[25] *See* Appendix B at 19-20.. Such departments could include sales research, benefits administration, accounting, and tax management. Additionally, advertising revenues could be increased through effective packaging using both outlets.

[26] *See* Appendix B at 5.

[27] *See* Appendix A, Figures 5-6.

[28] *Id.*

principal reason for this is the different nature of television and newspaper news operations."[29] Consequently, one need not have to worry that an "antagonistic voice" would be suppressed, especially if the alternative would be for the newspaper to fail or not invest in strengthening its news department due to strained financial conditions.

For these reasons, NAB strongly urges the Commission to begin a rulemaking proceeding aimed at eliminating the daily newspaper/broadcast crossownership rule.

C. TV National Cap and UHF Discount

The Commission has asked for comment on whether to eliminate or modify both the National Television Ownership rule[30] and the UHF Discount rule.[31] Invariably, these two rules must be looked at together because any modification to one will affect the other. NAB believes that the Commission should maintain both rules.

The Telecommunications Act of 1996 directed the Commission to increase the audience reach cap to 35%.[32] The Commission dispensed with the need for notice-and-comment rulemaking and promptly amended Section 73.3555(e) to reflect this change soon after implementation of the Act.[33] NAB believes that the new television ownership limits have not been in effect long enough to warrant any modification at this time. Additionally, there are such significant regulatory developments on the near-term horizon to make any change in the national ownership cap unwise.

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[29] *Id.* at 20.

[30] *Notice* at ¶ 14.

[31] *Notice* at ¶ 25.

[32] Telecommunications Act of 1996, Pub. L.No. 104-104, 110 Stat. 56 (1996) at Sec. 202 (c)(1).

[33] *Order*, 11 FCC Rcd 12374 (1996).

The Commission, the television industry and the public are anticipating the advent of digital television broadcasting – providing not only far superior picture quality, but the prospect of additional program diversity over each 6 MHz channel. There also are pending FCC rule makings proposing alterations in the TV local duopoly, attribution and/or one-to-a-market rules.[34] Until the effects of the DTV transition and other television regulatory changes are evident, we do not believe that the Commission should adopt any changes in the television national ownership rule.

The UHF Discount rule is a "companion" rule to the national television ownership rule. The rule provides for a 50% attribution "discount" of the television households for UHF television stations. This discount can play an important role in determining the national audience reach cap. Again, NAB believes this rule should be maintained in its current form.

The Commission observes in its *Notice* that improved receiver designs, increased cable pass rates and must carry rules may be decreasing the disparity between UHF and VHF television stations.[35] However, NAB does not believe that these changes are sufficient to support an alteration of the UHF discount rule.

NAB has provided two studies to the Commission that describe the disadvantages that a UHF station still has to a VHF station. The first study focused on the "penalty" imposed on UHF stations in terms of ratings.[36] After analysis of UHF and VHF network affiliate prime-time ratings – taking into account network affiliation and market size – the study concludes that UHF

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[34] Additionally, on July 14, 1998, Senator Conrad Burns introduced a bill that would require the FCC to modify Section 73.3555 to permit any party to own, operate or control television stations with overlapping contours if the stations are licensed to communities in different markets. S. 2306, 105th Cong., 2d Sess. (1998).

[35] *Notice* at ¶ 26.

[36] *See* Appendix C.

stations continue to face a penalty in ratings due to the fact they are UHF stations. Across all markets and networks, the average UHF affiliate had a 6.4 rating as compared to the average VHF affiliate rating of 9.8.[37] The second study looked to the financial difficulties faced by UHF stations due to the smaller audiences that typically are attracted to UHF stations.[38] This study analyzes the differences between the VHF and UHF affiliates of the four major networks and concludes that, financially-speaking, UHF stations generally fared worse than their VHF counterparts.[39] In 1990, the average UHF affiliate only generated net revenues 44.1% of the average VHF affiliate, 37.1% of the cash flow and 24.1 % of the pre-tax profits.[40] Based on the findings in these two studies, the Commission should not modify or eliminate the UHF Discount rule.

Also standing as reasons for the Commission to withhold any changes in the UHF discount rule are the ultimate outcomes in the DTV allotment process[41] and the Commission's pending rule making on digital television "must carry" rules.[42] Digital carriage rights and the number of television stations choosing to remain on the UHF band following the digital transition are still undetermined. These are factors that must be solidified before the Commission makes any changes to the UHF discount rule.

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[37] Appendix C at 1.

[38] *See* Appendix D.

[39] *Id.*

[40] Appendix D at Figure 1.

[41] *Fifth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 12809 (1997); *Sixth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 14588 (1997).

[42] *Notice of Proposed Rule Making* in CS Docket No. 98-120, ___ FCC Rcd ___ (1998), released July 10, 1998 ("DTV Must Carry NPRM").

D. Television Station/Cable Television Local Crossownership

In the Telecommunications Act the Congress removed the statutory provision that had prevented the FCC from rescinding or even modifying the current prohibition against local crossownership of a cable system and a television broadcast station.[43] As such, this is the first time in recent history that the FCC has given the public an opportunity to comment -- in a formal proceeding -- on the propriety of the Commission altering or eliminating the restriction. Based on considerations discussed below, it is NAB's view that the Commission should not, at this time, propose any changes to this crossownership restriction.

Now pending before the Commission is the landmark FCC rulemaking proceeding addressing "must carry" for local television stations in the digital age.[44] Until the Commission establishes a clear and effective "must carry" rule benefiting *all* local television stations, it would be premature and ill-advised for the Commission to allow the local cable operator to be the licensee of any local television station. That is, without a firm digital must carry obligation placed upon cable operators, there is more than just the potential for a cable operator to abuse its gatekeeper role and give preferred carriage to its owned and operated local station -- and perhaps either non-carriage or partial carriage to local stations owned by other entities.

In 1970 the Commission adopted the current prohibition of the ownership of an "attributable" interest in both a cable system and television broadcast station if the television station places a Grade B contour over any part of the service area of the cable system. The Commission concluded at that time that the rule was "needed to insure that healthy and vigorous

[43] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 § 202(i) (1996).

[44] *DTV Must Carry NPRM*, supra note 42.

competition occurs in markets where entry is limited and the competitive alternatives are necessarily few in number."[45]

It is clear that there now are significantly more competitive media alternatives than existed in 1970. For this reason NAB has supported here elimination of the daily newspaper/broadcast crossownership restriction and elsewhere has supported liberalization of local duopoly and one-to-a-market rules, for example. However, in none of these regulatory areas are we dealing with one competitor having the potential to eliminate or hamper the public's ability to access another competitor. But, that is the case with cable television.

Several reasons support the conclusion that now is not the time to alter the local cable/broadcast ownership prohibition. As the Congress noted earlier this decade, "[t]he cable industry has become a dominant nationwide video medium...[and] has become highly concentrated...a cable system serving a local community with rare exception, enjoys a monopoly...[and] television broadcasters like other programmers can be at the mercy of a cable operator's market power."[46] Congress went on to note that "there is no close substitute for that steadily-expanding complement of specialized program services offered by the typical cable

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[45] Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry Into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals, *Second Report and Order* in Docket No. 18397, 23 FCC 2d 816, 819 (1970).

[46] S.Rep. No. 102-92, 102d Cong., 1st Sess., 8, 45, 69 (1991); *see* HR Rep. No. 101-682, 101st Cong., 2d Sess., 40 (1990) ("Competition is essential both for ensuring diversity in programming and for protecting consumers from potential abuses by cable operators possessing market power. However, for a number of reasons, such competition has not emerged on a widespread basis"); *Report* in MM Docket No. 89-600, 5 FCC Rcd. 4962 (1990) ¶ 69 ("cable systems do possess varying degrees of market power in local distribution...Generally there us no close substitute for that steadily expanding complement of specialized program services offered by the typical cable system at this time").

system at this time."[47] Although DBS has provided significant multichannel competition, the local cable television operator still has a clear gatekeeper role vis-à-vis local television broadcasters. And it is that gatekeeper role which, at least pending final decisions concerning digital must carry and other regulatory relationships between local broadcasters and local cable operators, serves as an overarching reason for the Commission not to alter the broadcast/cable ownership prohibition. In addition, retention of the rule would maintain a competitive balance in the video marketplace. Thus, for the foregoing reasons, NAB opposes elimination of the cable/television cross-ownership rule.

E. Experimental Broadcast Stations

Although both radio and television are mature broadcast services, each is embarking on a digital transformation.[48] Broadcast auxiliary facilities also are facing regulatory change and dislocations.[49] As such, there are now even greater needs for responsible use of experimental broadcast stations that may develop technical solutions to the challenges facing the industry. NAB, thus supports elimination of this arbitrary restriction on the number of experimental stations that may be owned and operated by a single entity.

While we recommend elimination of the ownership restriction, we continue to urge the Commission to ensure that operation of the experimental facilities not endanger the interference-free service provided by other broadcasters during the time when such experimental stations are

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[47] *Report*, 5 FCC Rcd. 4962 at ¶ 69 (1990).

[48] *See Fifth and Sixth Report and Orders, supra* note 41. *See also Notice of Proposed Rule Making and Further Notice of Inquiry* in Gen. Docket No. 90-357, 7 FCC Rcd 7776 (1992).

[49] *See e.g. First Report and Order and Further Notice of Proposed Rule Making* in ET Docket 95-18, ___ FCC Rcd ___ (1997).

functioning. Interference protection remains a central Commission role that should not be compromised by the function of experimental or regularly-licensed communications facilities.

IV. CONCLUSION

For the reasons stated above we urge the Commission to take responsible steps – through future rule making – that will relieve unnecessary and counter-productive ownership restrictions. However, we recommend, as also explained herein, retention of those regulatory provisions where the benefits of lessened constraints clearly has not been shown.

Respectfully submitted,

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July 21, 1998

Appendix A

Media Outlets By Market – Update

MEDIA OUTLETS BY MARKET – UPDATE

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EXECUTIVE SUMMARY

Anyone who reads the popular or communications industries trade presses is well aware of the tremendous increase in then number of available information and entertainment sources. Added to the traditional media sources have been amazing increases in other sources, such as Direct Broadcast Satellite Services and the Internet.

What this report presents is an analysis of these media outlets on a market level basis. Following up a similar report from eleven years ago, we examine the number of available media outlets in each television market and analyze whether there are any trends across different market sizes.

Some of the highlights of the study show:

- The average market has 12.4 television stations and the total number of stations increased 19.7% since 1987.
- The average market has 84.1 commercial radio stations and the total number of commercial stations increased 16.7%.
- Nationwide cable penetration increased from 50.5% in May 1987 to 66.1 presently, and the average market has 65.8 cable channels in use. Some of the largest percentage increases in cable channels in use occurred in the smallest markets.
- The average market has 18.3 newspapers that reach 1,000 or more in circulation, 13.6 of which were published within the market, and 2.9 of which reach a minimum of 5% penetration.
- The average market has a 23.6% penetration of weekly newspapers.
- The average market has 10.2 national magazines that reach a 5% penetration.
- VCR penetration grew from 48.7% in 1987 to 84.2% presently.
- DBS subscribers now total more than nine million, with more than two million signing on in the last year.
- From 4.9 million households on line in 1994, nearly five times that number, 23.4 million, are presently on line reaching millions of sites, with that number expected to grow to 35.2 million by the year 2000.

Clearly, Americans throughout the country now have more sources for entertainment and information. Given the pace of technological advance, that number should continue to increase.

INTRODUCTION

It is probably not too far reaching to say that the world has recently opened up exponentially to many Americans with their ability to hear and see new sources of information and entertainment. Expansion of these sources has occurred not only in traditional media outlets but even more so with non-traditional outlets. Listeners and viewers in all markets now have more local television and radio stations to turn to, along with having access to dozens of cable and hundreds of channels from direct broadcast satellites and million of sites via Internet services. These increases in sources have generated a considerable amount of new competition for the "eyes and ears" of the American people and have expanded the geographic areas from which this competition emanates.

To document the magnitude of this expansion, we have updated an analysis conducted eleven years ago.[1] That study evaluated the number of different media outlets available in each of the then specified television markets. The list of available media at that time included newspapers, magazines, television and radio stations, cable television channels, VCRs, and certain other technologies (LPTVs, SMATVs, etc.). As that study eleven years ago concluded, "[T]he data presented here show a plethora of information sources, and one may expect the level of diversity to rise as technological advances make themselves felt in the marketplace."[2]

Was that prediction correct? Did the number of media outlets increase with technological advances? Of course, the answer is a strong yes. From the increase in radio and television stations to the increase in cable channels to the availability of 150-200 DBS channels to the connecting of a near-infinite number of Internet sites, consumers can now access a multitude of information and entertainment sources.

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[1] P. Vestal, "An Analysis of Media Outlets by Market," June 15, 1987, Appendix B, comments of the National Association of Broadcasters in MM Docket No. 87-7, Amendment of Sections 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules.

[2] Ibid.